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DEC 10 2010

OFFICE OF PETITIONS

In re Application of :
Woods :
Application No. 10/538,516 : ON APPLICATION FOR
Filed: August 8, 2006 : PATENT TERM ADJUSTMENT
Docket No. RD 443 :
:

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b) AND 35 U.S.C. § 154, filed September 10, 2010. Applicant submits that the current patent term adjustment should be six hundred eighty-one (681) days, not six hundred seventy-four (674) days as calculated by the Office as of the mailing of the initial determination of patent term adjustment.

Applicant disputes the period of reduction of 674 days for Office delay in mailing at least one of a notification under 35 U.S.C. 132 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application. Applicants contend the period of reduction should be 681 days.

The application for patent term adjustment is **DISMISSED**.

On June 10, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 674 days.

Applicant disputes the period of adjustment of 674 days for Office delay in mailing at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application fulfilled the requirements of 35 U.S.C. 371 in an international application. Applicant contends the period of reduction should be 681 days. Applicant argues that August 1,

2006 should be the date from which the 14 month period is calculated. The Office calculated the 14 month period from August 8, 2006, which is the completion date.

Applicant is informed that the date of completion of all 35 U.S.C. 371 requirements is relevant for purposes of patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)(II) and 37 CFR 1.702(a)(1) when the Office has failed to mail a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than 14 months after the date on which the requirements under 35 U.S.C. 371 were fulfilled. This date is the latest of:

- (A) the date of submission of the basic national fee;
- (B) the date of submission or communication of the copy of the international application;
- (C) the date of submission of the translation of the international application if the international application is not in the English language;
- (D) the date of submission of an oath or declaration of the inventor in compliance with 35 U.S.C. 371(c)(4)
- (E) the earlier of 30 months from the priority date or the date of request for early processing under 35 U.S.C. 371(f) if requested prior to 30 months from the priority date;
- (F) if a request for early processing has not been requested prior to 30 months from the priority date, the date of submission of any translation of the annexes to the international preliminary examination report if the translation of the annexes are filed within the time period set in a Notification of Missing Requirements requiring either an English translation of the international application or an oath or declaration; and
- (G) the date of submission of any surcharge for submitting the oath or declaration later than 30 months from the priority date.

The June 9, 2005 declaration was not acceptable because it failed to identify the PCT application number in the body of the declaration. Nothing was filed on August 1, 2006, so it is unknown why this was listed as the Date of Receipt of 35 U.S.C. 371(1)(c)(1), (c)(2) and (c)(4) requirements on the 371 ACCEPTANCE LETTER.

The date of completion in this application is August 8, 2006. It is the date that applicants filed an acceptable oath or

declaration and submitted the \$130.00 late declaration surcharge. These are the latest of the above-listed events.

Therefore, entry of the period of reduction of 674 days (from October 9, 2007, which is the date after 14 months after the date of completion, to August 12, 2009, the date a non-final Office action was mailed) was warranted.

In view thereof, the determination of patent term adjustment at the time of the mailing of the notice of allowance remains 674 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e) for consideration of the application for patent term adjustment under 37 CFR 1.705(b).

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and must include payment of the required fee under 37 CFR 1.18(e).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3230.



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Office of Petitions